

CHAPTER 96: RIGHT-OF-WAY CONSTRUCTION AND USE PERMITS

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***DECLARATION OF FINDINGS AND
PURPOSE; SCOPE***

§ 96.001 TITLE.

This body of regulations shall be known as the “Canton Right-of-Way Construction and Administration Ordinance.”
(Prior Code, § 12.04.010)

§ 96.002 FINDINGS AND PURPOSE.

(A) In order to provide for the health, safety and well being of its citizens, as well as to ensure the structural integrity of its streets and the use of the right-of-way, the city strives to keep its right-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the right-of-way, a primary cause for the early and excessive deterioration of its right-of-way is the frequent excavation by persons whose equipment is located therein.

(B) Right-of-way obstruction is a source of frustration for merchants, business owners and the general population, which must avoid these obstructions or change travel plans because of them. Persons whose facilities are located within the right-of-way are the primary cause of these frequent obstructions.

(C) The city and other public entities have invested millions of dollars in public funds to build and maintain the right-of-way. The city recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the city for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for citizens, such persons receive revenue and/or profit through the use of public property.

(D) Where roads are being constructed or reconstructed to city standards, existing facilities within the right-of-way which conflict with the proposed construction may have to be modified or relocated.
(Prior Code, § 12.04.020)

DEFINITIONS

§ 96.015 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. Any person requesting permission to excavate, obstruct, or construct in a right-of-way. ***APPLICANT*** does not include commercial vehicles or materials.

APPLICATION. The process by which an applicant submits a request to locate, maintain, or remove facilities in the right-of-way.

CITY COST. The direct and indirect costs, including loss of pavement life, borne by the city for pavement management, traffic management, risk management, financial management, cost recovery, infrastructure oversight, budget analysis, recordkeeping, legal assistance, systems analysis, application processing and checking, issuing permits, inspecting job sites, creating and updating mapping systems, and performing all of the other tasks required by this code, including other costs the city may incur in managing the provisions of this code.

CONSTRUCT. To excavate, install poles, install signs or install facilities, other than landscaping, on, above or under any part of the right-of-way.

CONSTRUCTION PERMIT or **PERMIT.** The permit which must be obtained before a person may excavate, obstruct, construct, repair or remove facilities in a right-of-way.

EMERGENCY. An occurrence, which demands immediate action to prevent significant environmental damage or loss of life, health, property or essential public services, including the re-erecting of critically needed traffic control signs or devices.

EXCAVATE. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

FACILITIES. Any tangible thing located in any right-of-way, but shall not include sidewalks and private driveway approaches, water sprinkler systems, invisible dog fences, mail boxes, boulevard plantings, gardens, private sewer and water hookup or repair in the right-of-way.

IN. When used in conjunction with right-of-way, means over, above, in, within, on or under a right-of-way.

OBSTRUCT. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

PERMITTEE. Any person to whom a permit to construct, excavate or obstruct a right-of-way has been granted by the city.

PERSON. Any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

PRIVILEGE. The legal entitlement of a person to use the right-of-way in the city for the purposes of carrying on its business. A **PRIVILEGE** for the purpose of this chapter does not include, and does not refer to, a license, permit or franchise. **PRIVILEGE** shall not include the use of the right-of-way for purposes not in furtherance of the furnishing of utility services.

PUBLIC UTILITIES COMMISSION. The South Dakota Public Utilities Commission or any successor organization thereto.

REGISTRANT. Any person who:

- (1) Has or seeks to have its facilities located in any right-of-way; or
- (2) In any way occupies or uses, or seeks to occupy or use, the right-of-way or any facilities located in the right-of-way.

RESTORATION. The process by which a right-of-way is returned to a condition as good as, or better than, its condition before the construction.

RESTORATION FEE. An amount of money paid to the city by a permittee to cover the cost of restoration.

RIGHT-OF-WAY. The surface and space above and below any real property in which the city has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to, any section line right-of-way, public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, park or any other place, area or real property owned by or under the control of the city. **RIGHT-OF-WAY** includes the standard ten-foot utility easement platted in the front ten feet of platted lots or any easements acquired by the city through the platting process or any other acquisition.

RIGHT-OF-WAY BOND. A bond posted to ensure proper and complete construction and repair of a permitted facility pursuant to a permit.

SERVICE DROPS. Those segments of a utility system that connect the end-user of that utility to the utility distribution system. These **SERVICE DROPS** are normally radial in nature and serve individual sites or structures.

SUPPLEMENTARY APPLICATION. An application made to construct, excavate or obstruct more of the right-of-way than was allowed in the permit, or to extend a permit that had already been issued.

UNDERGROUND FACILITIES. All lines, cables, conduits, posts, tanks and any other facilities owned or operated by persons other than the city which are located wholly or partially underneath right-of-way.

UTILITY. Any water, sewer, gas, drainage or culvert pipe and any electric power, telecommunication, signal, communication or cable television conduit, fiber, wire, cable or operator thereof, other than utilities operated by the city.
(Prior Code, § 12.04.030)

RIGHT-OF-WAY ADMINISTRATION

§ 96.030 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

Each person who occupies, uses or seeks to occupy or use the right-of-way for any facilities located in the right-of-way, or who has or seeks to have facilities located in any right-of-way shall register with the City Manager. Any person that currently maintains facilities in the right-of-way on the effective date of the ordinance codified in this chapter shall register pursuant to § 96.033 with the city within 90 days of the effective date of said ordinance. Any person whose facilities use right-of-way to connect two or more facilities which are not part of a continuous utility system shall register prior to installation of the facilities, but are not required to file an annual registration.
(Prior Code, § 12.04.040)

§ 96.031 NO CONSTRUCTION WITHOUT REGISTRATION.

No person may construct, install, repair, remove, relocate or perform any other work on, or use any facilities or any part thereof, located in any right-of-way without being registered with the city. Planting and maintaining vegetation in the right-of-way is exempt from the requirements of this subchapter.
(Prior Code, § 12.04.050) Penalty, see § 10.99

§ 96.032 GRANT OF PRIVILEGE.

(A) Any person required to register under § 96.031, that furnishes utility services or that occupies, uses or places its facilities in the right-of-way, is granted a privilege to do so, so long as it complies with all other requirements of law.

(B) The granting of such privilege is expressly conditioned on, and is subject to, continuing compliance with all provisions of law.

(Prior Code, § 12.04.060)

§ 96.033 REGISTRATION INFORMATION.

(A) The information provided to the city at the time of registration shall include, but not be limited to:

(1) The registrant's name, address, telephone, e-mail address and facsimile number;

(2) The name, address, telephone, e-mail address and facsimile number of a local representative who shall be available at all reasonable times;

(3) (a) Proof that the registrant has secured the insurance specified below. All insurance secured by the registrant under the provisions of this section shall be issued by insurance companies acceptable to the city. The insurance specified in this section may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance shall be provided to the city:

1. Worker's compensation insurance with statutory limits of the worker's compensation laws of the state and Coverage B: Employer's Liability covering operations of the registrant. This shall include "other states insurance" so as to include all states not named on the declarations page of the insurance policy, but excepting monopolistic state fund states. The available limits for Coverage B: Employer's Liability shall not be less than \$1,000,000 each accident, \$1,000,000 occupational disease - policy limits;

2. Commercial general liability insurance providing coverage not less than that of the standard commercial general liability insurance policy ("occurrence form") for operations of the registrant. If the occurrence form is not available, claims made coverage shall be maintained for three years after completion of this agreement. The policy shall include contractual, personal injury, bodily injury and property damage liability coverage with total available limits not less than \$1,000,000 per occurrence, not less than \$2,000,000 general aggregate and \$2,000,000 aggregate products and completed operations. This commercial general liability insurance policy shall name the city and its duly authorized representatives as an additional insured. The city shall be provided with a copy of the certificate and the policy endorsement prior to or upon execution of this agreement; and

3. Automobile liability insurance covering all owned, non-owned and hired automobiles, trucks and trailers. Such insurance shall provide coverage at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence.

(b) Registrant will provide the city with at least 30-days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage;

(c) Registrant agrees to hold the city harmless from any liability, including additional premium due because of registrant's failure to maintain the coverage limits required; and

(d) The city's approval or acceptance of certificates of insurance does not constitute city assumption of responsibility for the validity of any insurance policies nor does the city represent that the above coverage and limits are adequate to protect any individual/group/business, its consultants' or subcontractors' interests and assumes no liability therefore.

(4) Proof that the person is a corporation, including written evidence that it is authorized to do business in the state, as recorded and certified to by the Secretary of State; and

(5) Proof that the registrant has posted the bonds required by this code.

(B) The registrant shall keep all of the information listed above current at all times by providing to the city information of changes within ten days following the date on which the registrant has knowledge of any change.

(Prior Code, § 12.04.070)

§ 96.034 REPORTING OBLIGATIONS.

(A) (1) Each registrant shall, by April 1 of each year, file a construction and major maintenance plan with the city. The plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of right-of-way.

(2) The plan shall include, but not be limited to, the following information:

(a) The general locations and the estimated beginning and ending dates of all planned construction projects to be commenced during the next calendar year; and

(b) The tentative locations for all construction projects contemplated for the five years starting with the next calendar year. This information is not a public record and shall be governed by SDCL § 9-34-19.

(B) Each registrant shall maintain such records of the locations of its facilities in the right-of-way within the city and such other records as the city may reasonably require. Upon a showing of cause and upon reasonable notice, the city may require a registrant to perform a record audit at its sole expense.

(C) Each registrant shall submit a monthly list of the status of its active permits.

(Prior Code, § 12.04.080)

§ 96.035 UNREGISTERED FACILITIES.

(A) One year after the passage of the ordinance codified in this chapter, any facilities found in a right-of-way that has not been registered shall be deemed to be a nuisance.

(B) The city may exercise any remedies or rights it has at law or in equity, including, but not limited to:

(1) Abating the nuisance; or

(2) Taking possession of the facilities, and/or restoring the right-of-way to a usable condition.

(Prior Code, § 12.04.090)

§ 96.036 FUTURE USES.

In permitting any facilities to be placed in the right-of-way, the city is not liable for any damages caused thereby to any registrant's facilities that are already in place.

(Prior Code, § 12.04.100)

§ 96.037 ABANDONED AND UNUSED FACILITIES.

Any registrant who has abandoned facilities in any right-of-way that are interfering with construction or reconstruction projects shall remove them from the right-of-way when requested by the city.

(Prior Code, § 12.04.110)

RIGHT-OF-WAY PERMITS

§ 96.050 PERMIT REQUIREMENT.

(A) Except as otherwise provided in this code, no person may construct in any right-of-way without first having obtained a permit.

(B) A construction permit allows the holder to construct in that part of the right-of-way described in the permit and to hinder free and open passage in the specified portion of the right-of-way by placing facilities as described therein, to the extent and for the duration specified therein.
(Prior Code, § 12.04.120)

§ 96.051 PERMIT APPLICATIONS.

(A) No permit shall be issued unless the following information has been provided:

(1) Evidence that the applicant is a registrant or is authorized to apply for a permit on behalf of a registrant;

(2) Submission of a completed permit application in the form required by the city, including all required attachments, and dimensioned, dated drawings showing the location and area of the proposed project and the location of all existing and proposed facilities;

(3) If the applicant is proposing to rebuild or install overhead facilities, the utility shall provide evidence that surplus space is not available on existing utility poles along the proposed route;

(4) If the applicant is proposing an underground installation in existing ducts or conduits within the right-of-way, information in sufficient detail to identify:

(a) The excess capacity currently available in such ducts or conduits before installation of applicant's facilities; and

(b) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's facilities.

(5) If the applicant is proposing an underground installation within new ducts or conduits to be constructed in right-of-way:

(a) The location, depth, size and quantity of proposed new ducts or conduits; and

(b) The excess capacity that will exist in such ducts or conduits after installation of applicant's facilities.

(6) A construction schedule and completion date;

(7) Payment of all money due to the city for:

(a) Prior construction permits issued to applicant;

(b) Any loss, damage or expense suffered by the city as a result of applicant's prior construction in the right-of-way or any emergency actions taken by the city; and

(c) Any franchise or license issued to the registrant whose facilities are being constructed.

(B) No permits for service drops or minor maintenance work of short duration or limited scope shall be issued unless:

(1) Conditions of divisions (A)(1), (A)(6) and (A)(7) above are met; and

(2) Street locations of service drops or minor maintenance work are transmitted or called into the city, noting if hard surface removal or street crossings are involved.
(Prior Code, § 12.04.130)

§ 96.052 ISSUANCE OF PERMIT; CONDITIONS.

(A) Prior to issuance of any permit, excluding permits for service drops or minor maintenance work of short duration or limited scope, the applicant shall conduct, at its expense, a subsurface utility study on the proposed route of construction or extension. The study shall include the following tasks:

(1) Secure all available as-built plans, plats and other location data indicating the existence and approximate location of all underground facilities along the proposed construction route;

(2) Visibly survey and record the location and dimensions of any above-ground features of all underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs; and

(3) Plot and incorporate the data obtained from completion of the tasks described in divisions (A)(1) and (A)(2) above on the permittee's proposed system route maps and plan sheets. The permittee shall provide the city with this information.

(B) A permittee shall belong to the one call line location system.

(C) The city may impose reasonable conditions upon the issuance of the permit to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public. Protective measures and devices will be employed which are consistent with the *Uniform Mutual Traffic Control Devices*.

(D) The requirements of this section shall apply to new construction only if the construction is located outside the area designated by the city's design standards.
(Prior Code, § 12.04.140)

§ 96.053 PERMIT FEES.

(A) The city may require prior payment of permit fees.

(B) Permit fees paid for a permit that has been revoked are not refundable.
(Prior Code, § 12.04.150)

§ 96.054 JOINT APPLICATIONS.

(A) Applicants who make joint application for construction permits, for which construction is not performed by the city, may share in the payment of the permit fee.

(B) Applicants who apply for permits for the same construction, which is not performed by the city,

may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each will pay and so indicate on their applications.
(Prior Code, § 12.04.160)

CONSTRUCTION AND RESTORATION

§ 96.065 LOCATION OF FACILITIES.

The city may prohibit or limit the placement of new or additional facilities within the right-of-way if it determines there is insufficient space to accommodate the facilities. Factors to be considered in determining space availability include the public interest, the conditions of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.
(Prior Code, § 12.04.170)

§ 96.066 LEAST DISRUPTIVE TECHNOLOGY.

Construction or maintenance of facilities shall use all reasonable means to lessen damage and disruption of the right-of-way. A permittee may not intrude into the right-of-way without a specific written finding by the city that the permittee will use methods to lessen disruption to the right-of-way.
(Prior Code, § 12.04.180)

§ 96.067 SPECIAL EXCEPTIONS.

The city may grant an exception to the requirements of §§ 96.065 and 96.066 if the permittee, upon application, demonstrates with written evidence that:

(A) The exception will not create any threat to the public health, safety or welfare;

(B) The increased economic burden and the potential adverse impact on the permittee's construction schedule resulting from the strict enforcement of the requirement actually or effectively prohibits the ability of the permittee to provide utility services in the city; and

(C) The requirement unreasonably discriminates against the permittee in favor of another person.
(Prior Code, § 12.04.190)

§ 96.068 RELOCATION OF FACILITIES.

(A) A registrant shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the city requests removal and relocation, and shall restore the right-of-way. The city may make the request only when the facilities interfere with:

(1) A present or future city use of the right-of-way;

(2) Public improvement or a development project in which the city has an interest or investment; or

(3) The safety and convenience of ordinary travel over the right-of-way.

(B) Unless otherwise agreed by the City Manager, if, in the reasonable judgment of the City Manager, a registrant fails to commence removal of its facilities within 30 days after the city's removal order, or if a

registrant fails to substantially complete the removal, including all associated repair of the right-of-way of the city, within 180 days thereafter, the city may:

(1) Declare that all rights, title and interest to the facilities belong to the city with all rights of ownership, including, but not limited to, the right to connect and use the facilities or to effect a transfer of all rights, title and interest in the facilities to another person for operation; or

(2) Authorize removal of the facilities installed by a registrant on, over or under the right-of-way, at the registrant's cost and expense, by another person.

(C) Any portion of a registrant's facilities on, over or under the right-of-way designated by the city for removal and not timely removed by a registrant shall belong to and become the property of the city without payment to the registrant and the registrant shall execute and deliver such documents, as the city shall request, in form and substance acceptable to the city, to evidence such ownership by the city.
(Prior Code, § 12.04.200)

§ 96.069 RIGHT-OF-WAY RESTORATION.

(A) The work to be done under the permit, and the restoration of the right-of-way, must be completed within the dates specified in the permit, giving due regard to seasonal working conditions. In addition to its own work, the permittee must restore the general area of the work, including the paving and its foundations, to reasonably restore it to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for 12 months thereafter.

(B) In approving an application for a construction permit, the city may permit the permittee to restore the right-of-way or it may restore the right-of-way itself.

(C) If the city restores the right-of-way itself, the permittee shall pay the costs thereof within 30 days of billing. If, during the 24 months following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, the cost of repairing said pavement.

(D) If the city allows the permittee to restore the right-of-way, permittee shall, at the time of application of a construction permit, post a performance bond in an amount determined by the city to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, 12 months (24 months for pavement) after completion of the restoration of the right-of-way, the city determines that the right-of-way has been properly restored, the surety on the performance bond shall be released. The bond may be in the form of an annual right-of-way bond covering all construction permits issued by the city during that year, or an irrevocable, unconditional letter of credit.

(E) The permittee shall perform the work according to the standards and with the materials specified by the city. The city may prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

(F) By restoring the right-of-way itself, the permittee guarantees its work and shall maintain it for 12 months (24 months for trench settlement) following its completion. During this period, it shall, upon notification from the city, correct all restoration work to the extent necessary using the method required by the city. The work shall be completed within 30 calendar days of the receipt of the notice from the city.

(G) If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all repairs required by the city, the city, at its option, may do such work. The permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way.
(Prior Code, § 12.04.210)

§ 96.070 DAMAGE TO OTHER FACILITIES.

(A) When the city performs work in the right-of-way which requires maintaining, supporting or moving a registrant's facilities to protect them, and the registrant does not perform such work, the costs associated therewith will be billed to the registrant and shall be paid within 30 days from the date of billing.

(B) Each registrant shall pay for repairing any facilities in the right-of-way, which it or its facilities damage.
(Prior Code, § 12.04.220)

§ 96.071 INSTALLATION REQUIREMENTS.

The excavation, backfilling, restoration and all other work performed in the right-of-way shall be done in conformance with city specifications.
(Prior Code, § 12.04.230)

§ 96.072 INSPECTION.

(A) The permittee shall notify the city in advance of the time the work under any permit hereunder is started.

(B) The permittee shall make the work site available to the city for inspection at all reasonable times during the execution and upon the completion of the work.

(C) At the time of inspection, the city may order the immediate cessation of any work, which threatens the life, health, safety or well being of the public.

(D) The city may issue an order to the permittee for any work, which does not conform, to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be caused for revocation of the permit. Within five days after issuance of the order, the registrant shall present proof to the City Manager that the violation has been corrected. If such proof has not been presented within the required time, the City Manager may revoke the permit pursuant to § 96.087.
(Prior Code, § 12.04.240)

§ 96.073 OTHER OBLIGATIONS.

Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses and authority and to pay all fees required by any other city, county, state or federal rules, laws or regulations.

(A) A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.

(B) Except in the case of an emergency, or with the approval of the city, no right-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

(C) A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

(D) Any permittee shall contact all abutting property owners to identify any existing private facilities in the right-of-way, including, but not limited to, sprinklers and other utility lines. (Prior Code, § 12.04.250)

ENFORCEMENT OF PERMIT OBLIGATION

§ 96.085 DENIAL OF PERMIT.

(A) *Mandatory denial.* Except in the case of an emergency, no right-of-way permit will be granted:

- (1) To any person required to be registered who has not done so;
- (2) To any person as to whom there exists grounds for the revocation of a permit; and
- (3) If the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The city shall be guided by the safety and convenience of ordinary travel of the public over the right-of-way, and by considerations relating to the public health, safety and welfare.

(B) *Discretionary denial.*

(1) The city may deny a permit to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users.

(2) The city, in its discretion, may consider one or more of the following factors:

- (a) The extent to which the right-of-way space where the permit is sought is available;
 - (b) The competing demands for the particular space in the right-of-way;
 - (c) The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the particular company;
 - (d) The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
 - (e) The degree of compliance of the applicant with the terms and conditions of its franchise, this code and other applicable ordinances and regulations;
 - (f) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
 - (g) The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction;
 - (h) The balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way; and
 - (i) Whether the application has, over the previous two years, complied with the provisions of this chapter.
- (Prior Code, § 12.04.260)

§ 96.086 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.*

(1) Each registrant shall immediately notify the city of any emergency involving its facilities. The registrant shall take whatever actions are necessary to respond to the emergency.

(2) If the city becomes aware of an emergency regarding a registrant's facilities, the city may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

Any person who obstructs or excavates a right-of-way in an emergency shall subsequently obtain a permit.

(B) *Non-emergency situations.* Except in the case of an emergency, any person who obstructs or excavates a right-of-way without a permit must subsequently obtain a permit, pay double the normal permit fee, pay double all the other fees required by the code, deposit with the city the fees necessary to correct any damage to the rights-of-way and comply with all requirements of this code.

(Prior Code, § 12.04.270)

§ 96.087 REVOCATION OF PERMITS.

(A) Any permit may be revoked by the city following a revocation hearing held by the City Commission upon not less than ten days written notice thereof to the permittee.

(B) If a permit is revoked, the permittee shall reimburse the city for its reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Prior Code, § 12.04.280)

RIGHT-OF-WAY BONDS

§ 96.100 RIGHT-OF-WAY BOND.

Prior to beginning construction, a permittee shall deposit with the city an irrevocable, unconditional letter of credit and/or surety bond equal to 100% of the anticipated costs or such other lesser amount established by the city.

(Prior Code, § 12.04.290)

§ 96.101 PURPOSES.

The right-of-way bond shall serve as security for:

(A) The faithful performance by the permittee or registrant of the requirements of this code, including restoration of the right-of-way;

(B) Any expenditure, damage, or loss incurred by the city occasioned by the permittee's or registrant's violation of this code or its failure to comply with all rules, regulations, orders, permits, and other directives of the city issued pursuant to this code;

- (C) The payment of all compensation due to the city, including permit fees;
- (D) The payment of premiums for the required liability insurance;
- (E) The payment to the city of any amounts for which the permittee or registrant is liable that are not paid to city pursuant to law; and
- (F) The payment of any other amounts which become due to the city pursuant to law.
(Prior Code, § 12.04.300)

§ 96.102 FORM.

The right-of-way bond shall contain the following endorsement:

“It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until 30 days after completion of construction of the facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least 30-days written notice to the city of surety’s intention to cancel or not renew this bond.”

(Prior Code, § 12.04.310)

INDEMNIFICATION AND LIABILITY

§ 96.115 CITY DOES NOT ACCEPT LIABILITY.

By reason of the acceptance of a registration or the grant of a right-of-way permit the city does not assume any liability:

(A) For injuries to persons, damage to property or loss of service claims by parties other than the registrant or the city; or

(B) For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of facilities by registrants or activities of registrants.
(Prior Code, § 12.04.320)

§ 96.116 REGISTRANT OR PERMITTEE INDEMNIFIES CITY.

By registering with the city, a registrant agrees or by accepting a permit, a permittee is required to defend, indemnify and hold the city whole and harmless from all costs, liabilities and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities, or out of any activity undertaken in or near a right-of-way, whether any act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the city for any claim nor for any award arising out of the presence, installation, maintenance or operation of its facilities, or any activity undertaken in or near a right-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the city for its own negligence except for claims arising out of or alleging the city’s negligence where such negligence arises outdoors and is primarily related to the presence, installation, construction, operation, maintenance or repair of the facilities by the registrant or on the registrant’s behalf, including, but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the city; and the registrant, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf.

(Prior Code, § 12.04.330)

GENERAL PROVISIONS

§ 96.130 NONEXCLUSIVE REMEDY.

The remedies provided in this code are not exclusive or in lieu of other rights and remedies that the city may have at law or in equity. The city may seek legal and equitable relief for actual or threatened injury to the right-of-way, including damages to the right-of-way.
(Prior Code, § 12.04.340)

§ 96.131 RESERVATION OF REGULATORY AND POLICE POWERS.

The city, by the granting of a permit, or by registering a person under § 96.031, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which it has now or may be hereafter vested in the city under the Constitution and statutes of the state to regulate the use of the right-of-way by the permittee. The permittee, by its acceptance of a right-of-way permit, or registrant, by registration under § 96.031, must agree that all lawful powers and rights, regulatory power, police power, or otherwise as are or the same may be from time to time vested in or reserved to the city, shall be in full force and effect and subject to the exercise thereof by the city at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the city pursuant to such powers.
(Prior Code, § 12.04.350)

§ 96.132 DAMAGE CAUSED BY DEFECTS; RESPONSIBILITY.

This chapter shall not be construed to relieve from or lessen the responsibility of any registrant for damages to persons or property caused by defects, nor shall the city be held as assuming any such liability by reason of the issuance of any permits.
(Prior Code, § 12.04.360)